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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/579,918	05/26/2000	Philip C M Leung	1126.001US1	8219

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EXAMINER

FISCHER, ANDREW J

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/579,918

Applicant(s)

LEUNG, PHILIP C M

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgements

1. In view of the Appeal Brief filed on June 16, 2005 and an appeal conference held on or about May 11, 2006, PROSECUTION IS HEREBY REOPENED. A non final office action is set forth below.
2. To avoid abandonment of the application, appellant must exercise one of the following two options:
 - (1) file a reply under 37 C.F.R. §1.111; or,
 - (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37.
3. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 C.F.R. §41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

Election of Species

5. Applicant asserts that each of species A1-A6 are patentably distinct from each other. Applicant also asserts that each of species B1-B6 are also patentably distinct from each other. Because Applicant has not provided any explanation as to why they are patentably distinct, the

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Examiner maintains his position that the species represented by the figures noted above are not patentably distinct.

Claim Rejections - 35 USC §112 2nd Paragraph

6. The following is a quotation of the 2nd paragraph of 35 U.S.C. §112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 16-22, 25-28 are rejected under 35 U.S.C. §112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. In claims 16 and 26, it is unclear what is the “access restriction system.”

b. In claims 25 and 26, Applicant appears to be stating the server twice. The corresponding structure of the “means for transferring information . . .” is server 108. Because Applicant’s recites the server twice, it is unclear if anticipation requires one server or two servers.

Claim Rejections - 35 USC §103

8. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 1-10, 12-22, and 25-28 are rejected under 35 U.S.C. §103(a) as being unpatentable over Keillor in view of Keillor et. al. (U.S. 5,917,433)(“Keillor”) in view of Klanke (U.S.

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6,314,791) and Paradox for Window's User's Guide. Keillor discloses a computer system having a trailer tracking program (which tracks assets) which receives information (status) regarding the trailer and stores the information in a record (inherent); a plurality of terminals (inherent in any trucking operation); a terminal interface (the interface to 22); a terminal management system (the operating system of each terminal); an access restriction system (inherent in all wireless networks). Keillor does not necessarily disclose a gate restriction. Klanke discloses the gate restriction. Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Keillor as taught by Klanke to include Klanke's access restriction system.

10. In this rejection, Paradox for Windows User's guide is simply to show an exemplary relational database systems as disclosed in Keillor.

11. Claim 2 is alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Keillor/ Klanke/Paradox in view of Nijenhuis (PCT/NL98/00128). Keillor/ Klanke/Paradox discloses as discussed above but does not directly disclose a loading pad. Nijenhuis teaches a terminal (1) with a loading pad (Figure 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Keillor as taught by Nijenhuis to include a terminal with a loading pad. Such a modification would have provided a system where the transfer time of trailers to rails was reduced.

12. Based upon Keillor, the Examiner notes again that containers and trailers are art recognized equivalents. See MPEP §2144.06.

13. The Examiner concludes that Applicant has decided not to be his own lexicographer by indicating and defining claim limitations to have meanings other than their ordinary and

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accustomed meanings. To support this position, the Examiner relies on the following factual findings. First and as noted in the previous Office Action,¹ the Examiner has carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, and in spite of Applicant's statement in his Remarks,² the Examiner finds that not only has Applicant not pointed to definitional statements in his specification or prosecution history, Applicant has also not pointed to a term or terms in a claim with which to draw in those statements.³ Third and also as noted in the previous Office Action (and except for his discussion of claim 5), Applicant has not attempted to 'clearly set forth' or 'clearly redefine' a particular claim term. *Bell Atlantic Network Services Inc. v. Covad Communications Group Inc.*, 262 F.3d 1258, 1268, 59 USPQ2d 1865, 1870 (Fed. Cir. 2001). Finally, Applicant's attempt at lexicography (including his discussion of claim 5) fails to define his terms with reasonable clarity, deliberateness, and precision. See *e.g. Anchor Wall Systems, Inc. v. Rockwood Retaining Walls, Inc.*, 67 USPQ2d 1865, 1872 (Fed Cir. 2003) ("Contrary to the district court's claim construction, the written description does not describe 'with reasonable clarity, deliberateness,

¹ See the Examiner's previous Office Action mailed September 10, 2003, Paper No. 8, Paragraph No. 14.

² See Applicant's Remarks, Paper No. 10, Page 9, ¶2, "Applicant asserts that he had every intention of being his own lexicographer when drafting the specification and initial set of claims."

³ "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

and precision,”” citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1874 (Fed. Cir. 1994).⁴

Accordingly and for due process purposes, the Examiner gives notice that for the remainder of the examination process (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning is not overcome; the claims therefore continue to be interpreted with their “broadest reasonable interpretation . . .” *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).⁵ The Examiner now relies heavily and extensively on this interpretation.⁶ Unless expressly noted otherwise by the Examiner, the preceding claim interpretation principles in this paragraph apply to all examined claims currently pending.

⁴ See also *In re Thrift*, 298 F.3d 1357, 1364, 63 USPQ2d 2002, 2006 (Fed. Cir. 2002) (“Although an applicant may be his own lexicographer, nothing in the specification defines the phrase ‘speech user agent’ differently from its ordinary meaning.”) (citations omitted); *Abbott Labs. v. Baxter Pharm. Prods.*, 67 USPQ2d 1191, 1194 (Fed. Cir. 2003) (“Because the patentee did not deviate from the accustomed meaning of the disputed claim term, the term ‘effective amount’ is construed in view of its ordinary and customary meaning.”); *Northern Telecom Ltd. v. Samsung Elecs. Co.*, 215 F.3d 1281, 1295, 55 USPQ2d 1065, 1075 (Fed. Cir. 2000) (“Vagueness and inference cannot overcome an ordinary meaning of a claim term . . .”);

⁵ See also *In re Bass*, 314 F.3d 575, 577, 65 USPQ2d 1156, 1158 (Fed. Cir. 2002) (“In examining a patent claim, the PTO must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. Words in a claim are to be given their ordinary and accustomed meaning unless the inventor chose to be his own lexicographer in the specification”) (citations omitted); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc); and MPEP §§ 2111 and 2111.01.

⁶ See 37 C.F.R. §1.104(c)(3) which states in part: “the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]”

Response to Arguments

14. Applicant's arguments filed February 17, 2004 (Paper No. 10) have been fully considered but are moot in view of the new grounds of rejection.

Conclusion

15. References considered pertinent to Applicants' disclosure are listed on form PTO-892.

All references listed on form PTO-892 are cited in their entirety.

16. Unless expressly noted otherwise by the Examiner or other USPTO official, the following four (4) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action *and* any future office action(s), communication(s), or other correspondence provided by the USPTO: MPEP citations to Chapter 2300 are from the MPEP 8th Edition, Rev. 4, October 2005; citations to Chapters 200-900, 1200-1400, and 1700-1900, 2100, 2200, 2600 are from the MPEP 8th Edition, Rev. 3, August 2005. MPEP citations to Chapters 100, 1000, 1100, 1500, 2000, 2500, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. MPEP citations to Chapters 1600, 2300, 2400 are from MPEP 8th Edition, August 2001.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

18. A Supervisory Patent Examiner Alex Kalinowski has approved of reopening prosecution.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew J. Fischer whose telephone number is (571) 272-6779.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Andrew J Fischer
Primary Examiner
Art Unit 3627



Alexander Kalinowski
Supervisory Patent Examiner
Art Unit ~~3527~~

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AJF
May 15, 2006